

500 ADMINISTRATION

This chapter presents a brief summary of the statutory provisions for the overall employment security agency, the advisory councils, and the appeals authorities. All these provisions emphasize the public interest in the program as well as the interest of employers and employees as the groups most immediately concerned.

505 PLACE OF THE EMPLOYMENT SECURITY AGENCY IN THE STATE GOVERNMENT

There are no Federal requirements concerning the form of State administrative organization or its position in the State government. The Wagner-Peyser Act, the basic law of the employment service, requires that States designate, or authorize the creation of, a State agency vested with all powers necessary to cooperate with the U.S. Employment Services. The Social Security Act requires that State laws must include provision for making such reports containing such information as the Secretary of Labor may require. All the State laws include provisions that meet these specific Federal requirements and a general statement on Federal-State cooperation.

The administrative organization of the employment security agencies shows considerable diversity. Some State employment security agencies are independent boards or commissions. Others are independent departments of State governments, reporting directly to the governor. The remainder are in State departments of labor or other agencies. These various types of administrative organizations are outlined in the three parts of Table 500.

505.01 INDEPENDENT BOARD OR COMMISSION.--The employment security or unemployment compensation commissions or boards are made up of 3 to 7 members, usually 3, appointed by the Governor, except in South Carolina where members of the commission are elected by the State general assembly. In Michigan the commission is by law in, but not subject to, the Department of Labor.

The interest of employer and labor groups and of the public in the program is recognized in the statutory provisions for tripartite membership in some States. In the District of Columbia and Michigan, employer and employee groups must be represented. In Mississippi, where the three members represent the three State supreme courts districts, one member must be a representative of workers. Indiana requires one representative of large employers and one of independent merchants and small employers as well as two representatives of labor. In other States, commission members are, in practice, representative of interest groups.

Maine and Michigan requires that the membership of the commission be bipartisan in character. In addition, Michigan requires that employers and employees be represented, and Maine specifies that membership include representation from employers, labor, and the public.

In some States the Governor designates the chairman of the commission; in other States the commission or board elects its own chairman. In a few States with tripartite representation on the commission, the public member is chairman by statute; in other States the public member is, in practice, chairman. The Commissioner is chairman of the District of Columbia Unemployment Compensation Board, but he may delegate this authority.

In four States¹ the chairman of the commission is the executive officer of the employment security agency. In five States² with per diem or part-time commissions and South Carolina with a full-time commission, the commission appoints a full-time executive director or administrator. In Indiana the Governor appoints a full-time executive director who is secretary of the board.

505.02 INDEPENDENT DEPARTMENTS OF STATE GOVERNMENT.--The independent departments of State governments represent another type of administrative development (Table 500B). In these States the administration of the program is headed by a director, executive director, commissioner, or administrator appointed by the Governor.

505.03 IN STATE DEPARTMENT OF LABOR OR OTHER AGENCY.--Almost half the States have placed their employment security divisions in the State department of labor or other labor-oriented agency. In recent years a few States have moved the employment security division into a human relations, human resources, or social service agency.

In most of these States (Table 500C) the division of employment security or of employment is an integrated employment security agency headed by a director, executive director, or administrator. In Delaware, Hawaii and Wisconsin

¹ ME, NM, NC and TX.

² DC, MI, MS, OK. and WY.

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separate operating divisions report to the Department of Labor, in California to the Health and Welfare Agency, in Florida to the Secretary of Commerce, and in Kentucky to the Secretary of Workforce Development.

505.04 MERIT SELECTION OF EMPLOYEES.--One of the Federal requirements for administrative grants to States under the Social Security Act is that the State unemployment insurance law make provision for "methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods." All State laws have made provision for appointment on a merit basis of personnel administering the unemployment insurance programs with the exception of the policymaking heads of the agency. In the States with a civil service law applicable to all departments of State government, appointment of employment security personnel is in accordance with State civil service regulations. In States without statewide civil service systems, employees are appointed under merit systems which were established to meet the requirements of the Social Security Act.

510 ADVISORY COUNCILS

All but two State laws provide for statewide advisory councils. In 47 States such a council is mandatory; in 2 permissive. Hawaii and Montana have appointed advisory councils though there are no statutory requirements for such councils. In approximately half the States the council is appointed by the Governor; in the others by either the employment security administrative authority or by the overall administrative agency (Table 501).

510.01 PURPOSE OF ADVISORY COUNCILS.--In most States the councils are for the purpose of aiding the agency in formulating policies and meeting problems relating to the administration of the employment security act, and in assuring impartiality and freedom from political influence in the solution of such problems. In Arkansas, Delaware, Florida, New Hampshire and Wisconsin the State laws specifically call for a UI advisory council and in South Dakota one of the two separate councils is given responsibility for the unemployment insurance program. The council is concerned with the overall employment security program. The council can make recommendations on its own to the Governor and/or the legislature in 11 States.³ In Massachusetts the council reports to the Governor at least quarterly and to the legislature annually; in New York, to the Governor and legislature annually; in Missouri, to the Governor and legislature biennially; and in Pennsylvania, to the Governor periodically. The New Jersey employment security council reports to the Governor and the legislature annually and at such other times as it may deem to be in the public's interest. The Wisconsin council reports to each regular session of the legislature; in addition, it reports to the proper legislative committee on any pending unemployment insurance bill.

In Colorado the council must approve expenditures from the special administrative fund. The Illinois Board of Unemployment Compensation and Free Employment Office Advisors and the Board of Local Illinois Free Employment Office Advisors for each employment office are established by the Illinois Civil Administrative Code.

510.02 REPRESENTATION ON COUNCILS.--Equal representation of labor and employer groups is specifically provided in all States except Idaho, Kentucky and Texas, and one or more public members in all States except Oklahoma and Wisconsin. In Texas the council must be composed of persons representing employers, employees, and the public, but equal representation is not specified. In Idaho the director is to prescribe the qualifications of the members. In Kentucky membership consists of representatives of public interest and minority groups, the poor, benefit recipients and the general public. In New Jersey and Iowa no more than five members of the council may be of the same political party. In Nebraska two members must have no interest either as employers or employees, and in Missouri and Ohio some members must be individuals whose training and experience qualify them to deal with the technical, economic, and social aspects of unemployment insurance. Fourteen States⁴ provide that women must be represented on the advisory council; in practice they are represented on other State councils. New Jersey has a separate advisory council on disability benefits.

In Nevada the executive director of the employment security department serves as ex officio secretary of the respective councils. In Oklahoma the Chairman of the Employment Security Commission is ex officio Chairman of the council, and in Pennsylvania the Secretary of Labor and Industry is ex officio a member of the council; the Secretary appoints the Executive Secretary of the council.

³ AL, ME, MA, MI., MO, NJ, NY, OH, PA, WV and WI.

⁴ AR, FL, IN, KS, NV, NM., NY, OK, OR, PA, PR, RI, SD and WA.

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510.03 SPECIAL COUNCILS.--Twenty-seven States (Table 501) provide for local and industry or special councils as well as a statewide advisory council, but only in three States is their appointment mandatory. In all States except Maryland, Oregon and West Virginia, the local councils are appointed by the same authority as the State councils; in Maryland the Secretary of Economic and Employment Development appoints the local councils; in Oregon the Administrator of the Employment Division appoints other special councils; in West Virginia the State advisory council appoints the local councils for a limited and temporary period. Local councils also must ordinarily be representative of employees, employers, and the public; however the permissive provisions in Arizona, Idaho, Indiana and Washington contain no statements concerning membership of the special councils.

515 APPEAL AUTHORITIES

Among the requirements of the Social Security Act for Federal financing of the State administration of unemployment insurance is provision in the law for "opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." All State laws provide for such appeal tribunals; all but a few provide for two appeal stages (Table 502A) before cases can be appealed to the State courts. Obviously the provisions differ considerably from State to State with differences in the appeals load, in the overall administering pattern, in the geographic characteristics of the State, and other factors. In all States not only individuals whose claims are denied, but employers who have an interest, have a right to appeal decisions on claims.

As a result of the **Java** decision,⁵ after a claimant has been held eligible for benefits, such claimant will continue to receive benefits until such time as a decision is issued reversing the determination or decision allowing benefits. Thus, an employer's appeal will not affect the continuance in payment of benefits until a decision is issued denying benefits. The majority of State laws specifically provide for the payment of benefits pending an appeal from a determination or decision allowing benefits while other States have either interpreted their laws or been required by court order to follow this procedure. In all States this procedure applies to any determination or decision issued allowing benefits.

Most of the States⁶ specify that findings of fact, conclusions of law or final orders made by an unemployment insurance hearing officer or board of review will not be binding in any separate or subsequent proceeding brought before any court, judicial, administrative, or arbitration proceeding in that State or the U.S. Government. Maryland has a similar provision whereby certain communications made or reports submitted, in connection with the unemployment insurance law, may not be made the subject matter or basis of a suit for slander, libel, abusive or wrongful discharge unless the information communicated or submitted is false and malicious.

Table 502 is concerned with administrative and judicial review applicable to claims determinations. Where review involves employer liability only, there may be different time limits and different hearing bodies.

515.01 FIRST APPEALS STAGE.--Over one-half of the State laws provide that appeals at the initial stage are to be heard by a single referee or examiner. In most of the other States the law provides that an appeal may be heard by a referee (or examiner) or by a referee (or examiner) and two associates, the associates representing the interests of employers and employees, on a per diem basis.

The number of days for appealing to the first stage appeals body is generally stated in terms of days; however, in almost one-half of the States the period used is defined as calendar days. Among these States Maryland excludes Sundays and holidays; Kansas, Massachusetts, Michigan and Missouri extend the time if the last day falls on a Saturday, Sunday, or holiday; New Jersey, Ohio (by court decision) and Pennsylvania exclude the day of mailing and also the last day if it falls on a Saturday, Sunday, or holiday.

Of the States which do not define day, Connecticut extends the time if the last day for filing falls on a day when the unemployment offices are closed; Louisiana extends the time if the last day falls on a Saturday, Sunday, or holiday; and California, Nevada and Washington exclude the day of mailing and the last day if it falls on a Saturday, Sunday, or holiday.

⁵ In **California Department of Human Resources development v. Java**, the U.S. Supreme Court held the section 303 (a)(1) of the Social Security Act was intended to mean that benefits must be paid at the earliest stage of unemployment that such payments are administratively determined to be due.

⁶ AK, AZ, AR, CA, CO, CT, DC, FL, GA, ID, IL., IN, IA, KS, KY, LA, ME, MI, MN, MO, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, WA., WI and WY.

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The number of days for filing an appeal after notice of the determination varies among the States, ranging from 5 to 30 days. Only Indiana provides for a special appeal period (7 days) after the mailing of a monetary determination. In a few States the time may be extended if good cause is shown. In Missouri, when an appeal is not filed on time, an order is mailed to the claimant dismissing the appeal. But if requested within 10 days from the date of mailing the order, a hearing will be scheduled on the timeliness and merits of the appeal.

Idaho, Michigan and Ohio provide that an appeal can be taken only from a redetermination. This redetermination is subject to the same time limitation as is the appeal to the referee.

In all but a few States the decision of the first-stage appeals body is final in the absence of an appeal. In other States the referee may reconsider his decision within the appeal period (Table 502A, footnote 8). The Nebraska law permits the commissioner to reopen the appeal tribunal decision on request within 90 days from the date of mailing on the basis of fraud, mistake, or new evidence. The appeal tribunal then holds a further hearing on the factors contributing to the reopening. In New Jersey every decision of the appeal tribunal may be considered by the board of review, which may let the decision stand, remand it to another appeal tribunal for a new hearing, or withdraw the case to itself. Puerto Rico and Rhode Island provide that any determination or decision of the referee may be reopened if a worker or employer has been defrauded or coerced in connection with the decision; the time limitation is within 60 days of the knowledge of fraud or removal of coercion. Puerto Rico also provides that decisions issued by the referee, upon appeal of a claim, may be reconsidered by the director or, at his discretion, a referee.

515.02 SECOND APPEALS STAGE.--About one-half of the States have a board of review, board of appeals, or appeals board to hear cases appealed from the decision of the lower appeal tribunal (Table 502A). All these boards consist of three members, except Arizona which has four; Colorado, Louisiana, Michigan, New Hampshire and New York which have five and California which has seven. The Mississippi board is appointed by the Employment Security Commission, and the New Jersey board of review by the Director of the Division of Employment Security, and in California 5 members of the board are appointed by the Governor and one each by the Speaker of the Assembly and the Senate Rules Committee; in the other States, the appeals board is appointed by the Governor.

The members of the appeals boards represent labor, employers, and the public in a few States; but in West Virginia, the Governor may not appoint anyone who is identified with the interests of either employers or employees. In Indiana, Ohio, Oregon and Rhode Island, no more than two members, and in New York, no more than three members may belong to the same political party; and in Oklahoma, no member may serve as an officer of any political party organization during his term of office. California specifies that two of the members must be attorneys, in Indiana one member must be admitted to the practice of law in the State and in Maine the chairman of the commission must be an attorney. In Arkansas the chairman must be an attorney who is not a representative of employers or employees. New Hampshire requires that, when the board is in session, none of the three members be from the same category of representation.

In one-half of the States the second appeals stage is handled by an existing commission or agency head. These States include all but four⁷ of the States headed by an independent commission or board. The board, which constitutes the administrative agency, functions as the appeals board. In Missouri and Wisconsin, where the agency is under the Labor and Industrial Relations Commission and the Labor and Industry Review Commission respectively, these overall agencies serve as the appeals board. Idaho utilizes the industrial accident board part time as the unemployment insurance appeals board. The Kentucky Commissioner of Economic Security and two associates commissioners constitute the Unemployment Insurance Commission which serves as appeals board and adopts rules and regulations.

In Minnesota, Virginia and Washington, the commissioner in charge of the independent employment security agency hears second-stage appeals, and in Alaska and Puerto Rico the head of the overall agency carries out this function.

The number of days in the period for appeal to the second-stage appeals body is designated as calendar days in only eight States, of which Minnesota and Vermont so designate only the days after delivery of the referee's decision; Vermont further stipulates that the time limit to appeal to the board is within 6 days from the date of the return receipt of registered or certified mailing of the referee's decision. Many States (Table 502A, footnote 2), extend the time for filing for good cause.

Hawaii and Nebraska provide for only one administrative appeal which is to the first-stage appeals body. The claimant would then appeal for judicial review in the appropriate court.

⁷ IN, MI, MS and OK.

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Some States provide that a contested determination which involves a labor dispute shall be appealed directly to the second-stage appeals body. In some States a special examiner is designated to determine the original claim. In North Dakota the period for appeal to the second-stage appeals body from a decision concerning a labor dispute is shortened from a 12-day period to one of 7 days after delivery or 10 days after mailing.

515.03 JUDICIAL REVIEWS.--All the States provide for appeals to the courts for judicial review. The time limit ranges from 10 to 50 days, and in California to 6 months or the date on which the decision is designated as a precedent decision. About one-half of the States designate a specific time to exhaust actions before the second administrative appeal body, whose decision then is final. These States provide an additional period of time in which to seek judicial review commencing when the decision is final.

In New Jersey, which has no provision in its unemployment insurance law for appeals to the court, timeliness is governed by court rule.

Instead of allowing a time based on the delivery or mailing of the decision, four States count the days from the date of the second-stage appeal decision (District of Columbia and New Mexico), after the decision was made (Kentucky), or entered (Vermont); Hawaii, which allows only one administrative appeal, counts the days for judicial review from the service of the referee's decision.

In Colorado the claimant must appeal within 15 days to the commission for a review of its decision before he may appeal to the court. In North Carolina he must file a notice of intent to appeal before the commission's decision is final. Indiana allows an extension of 30 days from the date of a notice of intention to appeal to the court if made within the 15-day period from the date of mailing the board's final decision.

520 DISCLOSURE OF INFORMATION

Title III of the Social Security Act and the Federal Unemployment Tax Act have been amended to require the State employment security agencies to disclose wage and other relevant information in the agency records to other governmental agencies for use by those agencies in determining an individual's eligibility for, or the amount of, assistance or services under the Transitional Assistance to Needy Families (TANF) program, Medicaid, child support, a housing assistance program of the Department of Housing and Urban Development, food stamps or any State programs that are Federal-assisted. In general, the information obtained from the State employment security agency is to be used only under safeguards which ensure that the information is used solely for the purposes intended. In addition, the information is to be furnished on a reimbursable basis.